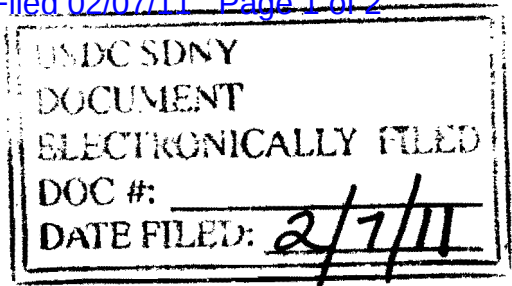


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



----- X

JOSE LORA,

Petitioner,

No. 04 Civ. 1902 (RJH)

- against -

ORDER

CAL WEST, Superintendent, Elmira Correctional
Facility,

Respondent.

----- X

RICHARD J. HOLWELL, District Judge:

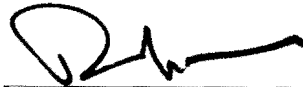
The Court is in receipt of petitioner Lora's request to proceed *in forma pauperis* on appeal. The Court previously adopted the Report and Recommendation of Magistrate Judge Gabriel W. Gorenstein recommending denial of Lora's Rule 60(b)(6) motion for reconsideration of the denial of his petition for a writ of habeas corpus. *Lora v. West*, 04 Civ. 1902, 2010 WL 3632506 (S.D.N.Y. Sept. 16, 2010). There, this Court found that "[t]he record establishes that Lora received notice of the denial of his habeas petition by November 2006 at the latest," that "Lora waited until December 17, 2009, to file this reconsideration motion," and that "a delay of this magnitude is 'unreasonable' under Fed. R. Civ. P. 60." *Id.* at *1. Lora seeks now to appeal the denial of his 60(b) motion on the grounds that the Court should have conducted an evidentiary hearing based on the affidavit of his sister. (Pet.'s Request To Proceed *In Forma Pauperis* on Appeal at 1.)

Judge Gorenstein carefully weighed the affidavit of Lora's sister in his Report and Recommendation, but concluded that Lora's delay in filing his motion was nevertheless

unreasonable. This Court agreed. “An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.” 28 U.S.C. § 1915(a)(3). The Court finds that any appeal of the denial of the Rule 60(b) motion would not be taken in good faith and therefore denies in forma pauperis status for the purpose of any appeal from the denial of the Rule 60(b) motion. *Coppedge v. United States*, 359 U.S. 438, 444-45 (1962).

SO ORDERED.

Dated: January 31, 2011
New York, New York

A handwritten signature in black ink, appearing to read 'R. Holwell', written over a horizontal line.

RICHARD J. HOLWELL
UNITED STATES DISTRICT JUDGE